

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1010 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 8-1-2-89 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 89. (a) As used in this
- 5 section, unless the context otherwise requires, the following terms have
- 6 the following meanings:
- 7 (1) "Sewage disposal service" means any public utility service
- 8 whereby liquid and solid waste, sewage, night soil, and industrial
- 9 waste of any single territorial area is collected, treated, purified,
- 10 and disposed of in a sanitary manner, and includes all sewage
- 11 treatment plant or plants, main sewers, submain sewers, local and
- 12 lateral sewers, intercepting sewers, outfall sewers, force mains,
- 13 pumping stations, ejector stations, and all other equipment and
- 14 appurtenances necessary or useful and convenient for the rendition
- 15 of such service.
- 16 (2) "Sewage disposal company" means any natural person, firm,
- 17 association, corporation, or partnership owning, leasing, or
- 18 operating any sewage disposal service within the rural areas of this
- 19 state, and all provisions of this chapter pertaining to a public
- 20 utility shall apply with equal force and effect to a sewage disposal
- 21 company, except insofar as said provisions may be inconsistent
- 22 with specific provisions of this section.
- 23 (3) "Rural area" means territory lying within the state of Indiana
- 24 and lying outside the corporate limits of a municipality.
- 25 (4) "Certificate of territorial authority" means a certificate of
- 26 convenience and necessity issued by the commission pursuant to
- 27 this section, which said certificate shall be deemed an
- 28 indeterminate permit, unless expressly conditioned otherwise by
- 29 the commission when issued.
- 30 (5) "Notice of hearing" means notice of the time, place, and

purpose of a hearing, given by publication in at least one (1) newspaper of general circulation in each of the counties in which the particular sewage disposal company operates or proposes to operate and given also in writing by United States registered mail:

(A) to each other sewage disposal company operating in territory contiguous to the territory in which the particular sewage disposal company operates or proposes to operate;

(B) to each municipality in territory contiguous and nearest to the territory in which the particular sewage disposal company operates or proposes to operate; and

(C) to such other persons or entities which the commission may from time to time require by its rules and forms;

all such notices shall be so mailed as to be received by the recipients at least ten (10) days prior to any hearing, or as otherwise required by the commission.

(6) "Package sewage disposal company" means a sewage disposal company that provides or will provide sewage disposal service to less than five hundred (500) customers.

(b) It is hereby declared to be in the public interest to provide for the orderly development and rendering of sewage disposal service in rural areas within the state of Indiana, and such public interest makes it necessary and desirable that to the extent provided herein the holding of a certificate of territorial authority should be required as a condition precedent to the rendering of such service, and that such operation be under the control, regulation, and supervision of the commission, and such sewage disposal companies shall not be subject to regulation by any municipality or county government or metropolitan regulatory body, or any branch or subdivisions thereof or substitute therefor in the form of special service districts, with the ~~exception~~ **exceptions** that: ~~said~~

(1) a sewage disposal company shall be subject to the comprehensive plan, zoning, and subdivision requirements and regulations of the governmental units having jurisdiction in the area; **and**

(2) a package sewage disposal company is subject to the requirements set forth in subsection (m).

However, all functions, powers, and duties of the state department of health and the water pollution control board shall remain unaffected by this section.

(c) No sewage disposal company shall commence the rendering of sewage disposal service in any rural area in the state of Indiana in which it is not actually rendering sewage disposal service, without first obtaining from the commission a certificate of territorial authority authorizing such sewage disposal service, finding that public convenience and necessity require such sewage disposal service within such rural area by such sewage disposal company, and defining and limiting specifically the rural area covered thereby. No sewage disposal

1 company hereby required to hold such a certificate shall render any
 2 additional sewage disposal service within such rural area to any extent
 3 greater than that authorized by such certificate or shall continue to
 4 render sewage disposal service within such rural area if and after such
 5 certificate of territorial authority has been revoked or transferred as in
 6 this section provided, unless in such order of revocation or transfer the
 7 commission shall require continued service until a new sewage disposal
 8 company or municipality actually takes over such service. The
 9 commission shall not have the power to require extension of such
 10 service by any sewage disposal company into any additional territory
 11 than that defined and limited in such a certificate without the consent of
 12 such sewage disposal company.

13 (d) Whenever any sewage disposal company proposes to commence
 14 the rendering of sewage disposal service in any rural area, it shall file
 15 with the commission a verified application for a certificate of territorial
 16 authority to cover the proposed service. The commission shall by rule
 17 prescribe the form of the application and the information to be
 18 contained therein, **including information necessary to make a**
 19 **determination under subsection (m)**, and such application by any
 20 such company shall conform to such prescribed form. The commission
 21 shall set the matter for hearing and notice of such hearing shall be given
 22 to the parties and in the manner defined in this section. Any city may,
 23 and upon petition to the commission shall, be made a party to any
 24 service proposal if its territorial limits lie within five (5) miles of the
 25 area to be serviced under this section. **A verified application**
 26 **submitted by a package sewage disposal company must include a**
 27 **resolution in support of the verified application adopted by the**
 28 **board of county commissioners of the county in which the package**
 29 **sewage disposal company seeks to provide sewage disposal**
 30 **services.**

31 (e) If, after notice of hearing and hearing on any application for a
 32 certificate of territorial authority, the commission shall find from the
 33 evidence introduced at such hearing, including any evidence which the
 34 commission shall have caused to be introduced as a result of any
 35 investigation which it may have made into the matter, that the applicant
 36 has proved:

- 37 (1) lawful power and authority to apply for said certificate and to
- 38 operate said proposed service;
- 39 (2) financial ability to install, commence, and maintain said
- 40 proposed service; and
- 41 (3) public convenience and necessity require the rendering of the
- 42 proposed service in the proposed rural area by this particular
- 43 sewage disposal company; however, in the event the service is
- 44 proposed for a proposed rural real estate addition, division, or
- 45 development, or any part thereof, the reasonably expected sewage
- 46 disposal service requirements of the anticipated residents may be

1 found to constitute such public convenience and necessity;
2 then the certificate of territorial authority, defining and limiting the rural
3 area to be covered thereby, shall be granted to the applicant, subject to
4 such terms, restrictions, limitations, and conditions, including but not
5 limited to a reasonable time in which to commence operations, as the
6 commission shall determine to be necessary and desirable in the public
7 interest.

8 (f) In cases of applications filed by two (2) or more sewage disposal
9 companies seeking the issuance of a certificate of territorial authority
10 for the same area or areas or any conflicting portions thereof, the
11 commission may either consider such applications separately or by
12 consolidation of two (2) or more or all within a single hearing at its
13 discretion and shall have the power to issue its certificate after notice of
14 hearing and hearing to any single qualified sewage disposal company
15 for a particular rural area, or, in the event that the commission
16 determines and finds that two (2) or more or all applicants seeking the
17 same area or areas or any conflicting portions thereof are both or all
18 qualified, then the commission shall have the power to determine which
19 is the better or best qualified, or whether the same area or areas or any
20 conflicting portions thereof shall be divided between or among such
21 qualified applicants. However, in no event shall such area or areas or
22 portions thereof be greater than that for which the particular applicant
23 applied, unless such sewage disposal company shall consent and agree
24 in writing to such modification of its application and the issuance of
25 such modified certificate.

26 (g) After the issuance of such certificate, no other sewage disposal
27 company shall render sewage disposal service in the area or areas so
28 determined and so defined in any certificate of territorial authority
29 issued by the commission, except after notice of hearing and hearing,
30 and the determination and finding by the commission that public
31 convenience and necessity require that sewage disposal service in said
32 same area or areas be also rendered or offered by an additional or
33 another company, and the issuance of a certificate duly granted by the
34 commission as provided in this section.

35 (h) A sewage disposal company shall be required to furnish
36 reasonable adequate sewage disposal services and facilities for which
37 said service and facilities it shall be entitled to charge reasonable,
38 nondiscriminatory rates, subject to the jurisdiction of the commission
39 for the purpose of fixing said rates to be charged to patrons of such
40 sewage disposal company for sewage disposal service, and for such
41 purpose the commission is given jurisdiction to proceed in the same
42 manner and with like power as is provided by this chapter in the case of
43 public utilities.

44 (i) To encourage the installation of sewage treatment plants, and
45 sewers, mains, stations, and all other equipment and appurtenances for
46 rendering sewage disposal service in rural areas in close proximity to

1 municipalities, and to ensure that a sewage disposal company which had
 2 made such installation in such area can recover the cost of its
 3 investment, in the event that the area or areas or any part thereof
 4 included within the territory granted under a certificate of territorial
 5 authority shall be annexed by any municipality at any time within
 6 twelve (12) years from the date that such certificate was granted, a
 7 sewage disposal company operating under such certificate shall
 8 continue to operate under such certificate of territorial authority, subject
 9 to the exclusive jurisdiction and regulation of the commission, for the
 10 unexpired portion of such period of twelve (12) years from the date of
 11 granting such certificate, or, in the case of a determinate permit
 12 specifying a term shorter than twelve (12) years, then for the unexpired
 13 portion of such lesser period as specified by such permit from the date
 14 of granting such permit. However, the foregoing provisions in regard to
 15 continued operation within the corporate limits of a municipality after
 16 annexation shall not affect the right of the sewage disposal company to
 17 cease its operation of providing sewage disposal service within such
 18 annexed territory prior to the termination of said twelve (12) year or
 19 lesser determinate permit period, upon thirty (30) days written notice to
 20 the commission, the municipality, and all patrons.

21 (j) Upon approval by the commission given after notice of hearing
 22 and hearing, but not otherwise, any certificate of territorial authority
 23 may:

24 (1) be sold, assigned, leased, or transferred by the holder thereof
 25 to any sewage disposal company to which a territorial certificate
 26 might be lawfully issued; or

27 (2) be included in the property and rights encumbered under any
 28 indenture of mortgage or deed of trust of such holder;

29 or any sewage treatment plant or plants, sewers, mains, stations, and
 30 equipment and appurtenances for the rendering of sewage disposal
 31 service, or any part thereof, may be sold, assigned, leased, or transferred
 32 by the holder thereof to any municipality if these assets lie within an
 33 area which shall have been annexed by such municipality or lie within
 34 the given radius of miles from the corporate limits of such municipality
 35 into which it is authorized to render such services, if such municipality
 36 is prepared to render a comparable sewage disposal service without loss
 37 of continuity of service, and if the terms of such sale, assignment, lease,
 38 or transfer are reasonable. However, once the commission has given its
 39 approval to such transaction and the transaction itself is actually
 40 consummated, the commission shall have no control over the sewage
 41 disposal service henceforth rendered by such municipality as a
 42 municipally owned utility (as defined in this chapter).

43 (k) Any certificate of territorial authority may, after notice of hearing
 44 and hearing, be revoked by the commission, in whole or in part, for the
 45 failure of the holder thereof to furnish reasonably adequate sewage
 46 disposal service within the area or areas determined and defined in such

certificate of territorial authority, or for the failure of the holder thereof to comply with any applicable order or rule prescribed by the commission in the exercise of its powers under this chapter, or for failure to comply with any term, condition, or limitation of such certificate of territorial authority.

(l) After the commission revokes any certificate of territorial authority under subsection (k) or after the county board of health determines the existence of a serious health problem related to the sewage disposal facility, the county commissioners of the county in which the sewage disposal facility is located may acquire the facility, subject to the approval of the acquisition by the county council, except that the county commissioners may not acquire any facility already acquired by any city or town. The county commissioners shall acquire the sewage disposal facility by:

(1) gift, grant, purchase, or condemnation that is funded in the same manner that cities and towns fund sewage treatment acquisitions under IC 36-9; or

(2) a lease arrangement that is funded in the same manner that cities and towns fund leases of sewage disposal facilities under IC 36-9.

After acquisition, the county commissioners shall repair, operate, and maintain the sewage disposal facility and charge user fees for these services.

(m) Before the commission may issue a certificate of territorial authority to a package sewage disposal company, the commission must determine that the package sewage disposal company is the most appropriate provider of sewage disposal services for the rural area covered by the certificate of territorial authority. The issuance of a certificate of territorial authority to a package sewage disposal company is subject to review and approval by the department of environmental management."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1010 as printed February 17, 2006.)

Senator BOWSER